BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

Report of Opinion of the Court Below.

The opinion of the Supreme Court of Illinois in this cause is reported in 377 Illinois Official Reporter 510 and in 37 North Eastern Reporter, Second Series 180, and appears in the record at pages 21 to 25.

II.

Jurisdiction.

1. Jurisdiction of this Honorable Court is invoked under Section 237 (b) of the Judicial Code, as amended by the Act of February 13, 1925, C. 229, Section 1, 43 Stat. 937, Section 344 of Title 28 U. S. C. A.

2. The judgment of the Supreme Court of Illinois, which affirmed the decree of the trial court, was entered on September 15, 1941. (R. 39.) A petition for rehearing was filed by Petitioners in the Supreme Court of Illinois on October 10, 1941. (R. 25.) On November 12, 1941, the Supreme Court of Illinois entered an order denying the petition for rehearing (R. 38); and on November 25, 1941, Petitioners' motion for stay of mandate was granted. (R. 41.)

3. A final judgment or decree has been rendered by the highest court of the State of Illinois wherein a right or privilege was specially set up or claimed by the Petitioners under the Fourteenth Amendment to the Constitution of the United States, and such judgment or decree erroneously denied to the Petitioners such a right or privilege.

4. One of the grounds of Petitioners' complaint in the

Circuit Court of Will County (R. 10, 11) and one of the errors relied upon in the Supreme Court of Illinois (R. 22, 23), and in the petition for rehearing (R. 26, 35 to 38) was that the method of assessment of Petitioners' farm lands violated the equal protection clause of the Fourteenth Amendment to the Constitution of the United States. By affirming the trial court's decree, the Supreme Court of Illinois held that the plan of assessment of Petitioners' farm lands in Will County in 1939 did not violate the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

5. *Sioux City Bridge Co.* v. *Dakota County, Nebraska,* 260 U. S. 441 (1923) and *Iowa-Des Moines National Bank* v. *Bennett,* 284 U. S. 239 (1931) are believed to sustain the jurisdiction of this court to review this case by certiorari.

III.

Statement of the Case.

This is a suit in equity brought in the Circuit Court of Will County, Illinois, by Petitioners, owners of certain farm lands, against the Respondent, County Treasurer and *ex-officio* County Collector of that County, seeking an injunction against the collection of 1939 real estate taxes produced by the portions of the assessments of Petitioners' lands alleged to be illegally excessive.

Petitioners' complaint in the trial court was dismissed on Respondent's motion. (R. 15.) Petitioners elected to stand upon their complaint, and the trial court entered a final decree dismissing the suit for want of equity. (R. 15.) The facts in the case, therefore, are the well pleaded allegations of the complaint admitted to be true by Respondent's motion to dismiss. The essential allegations of the complaint thus admitted to be true are as follows:

Petitioners are the owners of farm lands located wholly

outside the limits of any incorporated city or village in Will County. (R. 3.) Respondent is the duly elected, qualified and acting County Treasurer of Will County and, as such, is *ex-officio* County Collector of that County and is charged with the duty of collecting all real estate and personal property taxes in the County. (R. 3, 4.)

Section 1 of Article IX of the Illinois Constitution provides for levying property taxes "by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property— * * *"[1] Pursuant to this constitutional mandate, the Illinois General Assembly has enacted statutes providing for the assessment of property and the levy and collection of property taxes. (R. 4.) The complaint sets forth (R. 4 to 8) the various statutory requirements applicable to the assessment of real property and the levy and collection of taxes in Will County and the powers and duties of the various officials in connection therewith. Section 501 of Chapter 120 of the 1939 Illinois Revised Statutes provides in part as follows:

> "Real property shall be valued as follows:
> (1) Each tract or lot of real property shall be valued at its fair cash value, estimated at the price it would bring at a fair, voluntary sale."[2]

For many years the taxing authorities of Illinois have generally disregarded this statutory requirement that real estate be assessed at its fair cash value and have deliberately and intentionally valued real estate for assessment purposes at varying proportions less than fair cash value. (R. 8.)

Beginning in 1935, the Illinois Tax Commission undertook a state-wide study of assessment ratios in the various counties in Illinois in order that the Commission could value all property in each county assessed by it at the same

[1] See Appendix.

[2] See Appendix.

proportion of fair cash value as the property assessed by the local assessment officials. In its survey[3] the Commission examined all *bona fide* real estate transfers made in the State during the years 1935, 1936 and 1937, compared the consideration in each transfer with the most recent assessment, divided all real estate transfers into two classes, urban and rural, determined separate ratios for urban and rural property in each county, and ascertained and used a weighted average of the two as the county level of assessment. (R. 8, 9.) For Will County the Commission found that the level of assessment of rural property as thus classified was substantially 50% higher than that of urban property and 25% above the weighted average of the two; that rural property was assessed generally at 35% of its fair cash value, whereas urban property was assessed at 24% thereof, the weighted average of the two being 28%. (R. 9.)

Before the 1939 quadrennial assessment was made in Will County, the existing illegal and unconstitutional discrimination against rural lands, including Petitioners' farms, in the 1935 quadrennial assessment was pointed out by representatives of Petitioners to Respondent, who is also *ex-officio* Supervisor of Assessments, and Petitioners requested that the discrimination be removed in the 1939 assessment. Despite full knowledge of the discrimination in the 1935 quadrennial assessment against rural lands and in favor of urban real estate, the Will County assessing officials, including Respondent, made the 1939 assessment on the same basis as theretofore, thereby perpetuating the discrimination against rural lands. (R. 9.) These assessing officials had publicly stated, however, that in 1939 they were assessing all real estate in Will County at 30% of fair cash value. (R. 8.)

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[3] For a discussion of the official character of surveys made by the Illinois Tax Commission see:

People v. *C. B. & Q. R. R. Co.*, 300 Ill. 399, 402, 403, (1921).

Two independent surveys support the allegations of the complaint that in the 1939 assessment, as actually made in Will County, farm lands were assessed at a level of assessment which is approximately 50% higher than that used in assessing town and city lots. The first was a supplemental survey made by the Illinois Tax Commission which found that the assessment ratios in Will County in 1939 were the same as in the 1935 quadrennial assessment. (R. 9.) The second was a survey by the Illinois Agricultural Association. This latter survey included an examination of every real estate transfer in Will County between January 1, 1938 and April 1, 1939 (the assessment date of the 1939 quadrennial assessment). All real estate transfers which involved a willing buyer and a willing seller and for which definite information as to the consideration was available were listed, and the consideration was then compared to the 1939 assessed values. All these transfers were divided into two groups denominated "town and city lots" and "farm lands". The ratio of assessment to sales value of the group denominated "town and city lots" was 24.62% and of the group denominated "farm lands" was 34.49%. (R. 9, 10.)

Each Petitioner duly filed a complaint against the 1939 assessment of his parcel of farm land with the Board of Review of Will County. At a date set for hearing by the Board, Petitioners' representatives informed the Board of the illegal and unconstitutional discrimination against rural property as demonstrated by the various surveys made by official and private groups. They pointed out that farm lands in 1939 were deliberately, systematically and arbitrarily assessed at a level of assessment substantially 50% higher than that used in assessing town and city lots and 25% above the county level of assessment, as found by the Illinois Tax Commission. They requested the Board to reduce the assessments of Petitioners' farms to the same level as that used in assessing town and city lots. The

Board of Review, however, arbitrarily denied Petitioners relief. (R. 10.)

As a result of the foregoing, Petitioners' farms have been systematically and intentionally assessed in 1939 by the Township Assessors, by the Respondent as Supervisor of Assessments, and by the Board of Review of Will County at a level of assessment grossly in excess of that used in assessing town and city lots, causing Petitioners to bear an illegal, excessive, and disproportionate share of the general tax burden in Will County in violation of Section 1 of Article IX of the State Constitution and in violation of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States. (R. 10, 11.)

The 1939 taxes extended upon the illegal portions of the assessments of Petitioners' farms are in turn excessive, illegal and un-uniform and constitute a lien against their property, which lien is a cloud upon their title to the same. Respondent, as *ex-officio* County Collector, has demanded payment of the illegal taxes from Petitioners and has threatened that unless the taxes are paid he will collect them by sale of Petitioners' farm lands. Petitioners have each paid 70% of the 1939 taxes extended against their farms, which payments they contend represent all the 1939 taxes lawfully extended against their properties. (R. 11.) The balance of the 1939 taxes, extended upon illegal, excessive, discriminatory and non-uniform assessments made in violation of Section 1 of Article IX of the State Constitution and in violation of the Fourteenth Amendment to the Constitution of the United States, are illegal and void. Respondent's threats to collect such illegal and void taxes threaten Petitioners with irreparable injury. (R. 11, 12.) Petitioners have offered to do equity by paying any additional 1939 taxes which the court, after hearing, might find to be justly due. (R. 12.)

The complaint prayed that the court decree all the 1939

assessments of Petitioners' parcels of real estate in excess of 70% thereof illegal and void; that Petitioners have paid in full all of the 1939 taxes extended against their properties; and that the Respondent be permanently enjoined from collecting any additional 1939 taxes upon Petitioners' properties. (R. 12.)

The trial court filed an opinion in support of its order sustaining Respondent's motion to dismiss. (R. 15 to 18.) This opinion gives three reasons for the trial court's ruling:

First, farm property and town and city lots are in an entirely different class and "neither omission to assess nor undervaluation of one kind or class of property will authorize interference by a court of equity as against another class or kind." (R. 16.)

Second, that since Petitioners are only a relatively small proportion of the whole number of owners of farm lands in Will County, it would be unfair to grant them relief when the other farm owners in the county would obtain no relief. (R. 17.)

Third, Petitioners remedy was "an action by mandamus on behalf of all the property owners to compel the assessing officials to obey the Constitution and to assess all real estate and perhaps all property at the same rate." (R. 17.)

Petitioners duly appealed to the Supreme Court of Illinois which affirmed the trial court's decree.

In its opinion (R. 21 to 25) the Supreme Court pointed out that section 1 of Article IX of the Constitution "precludes the taxing officials from adopting a method of valuing property whereby there is a discrimination in favor of or against any class of property" (R. 23) and that "where an equalizing factor has been adopted by a taxing body or taxing officials by which property is listed for taxation purposes below its fair cash value, the same equalizing factor must be applied equally to other property in or-

der to secure uniformity of taxes." (R. 23.) The opinion states that the valuation of property fixed by the proper assessing officials "is not, in the absence of fraud, subject to the supervision of the judicial department of the state."

The reasons assigned by the Illinois Supreme Court for affirming the trial court's decree are contained in the following two paragraphs of the opinion (R. 24):

> "Plaintiffs do not claim the taxing officials fraudulently valued their property too high. Neither do they contend the value placed on their property was higher proportionately than the value placed on other farm lands of like character similarly situated. Nor is there any claim of unjust discrimination arising out of the application of a different equalizing factor as between the various classes of property.
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> "If plaintiffs' grievance is directed at an over-assessed valuation from which fraud is presumed, then they have failed to plead facts to which such a presumption could be applied. The allegations in reference to over-assessment of farm lands are based on the sale values of 80 tracts of farm lands but there is no allegation that any of plaintiffs' lands formed a part of the 80 farms so considered, nor were any facts pleaded to show a similarity between any of the farms sold and plaintiffs' lands. On the other hand, if plaintiffs' claim rests upon the fact the city property was valued at a lower percentage of its fair market value than the farm lands, then the gist of their claim is that their land should be relieved from a part of the taxes levied for the reason other real estate was not assessed high enough. A court of equity will not grant injunctive relief under such circumstances."

Petitioners duly filed a petition for rehearing, which was denied on November 12, 1941. (R. 38.) A stay of mandate was subsequently granted. (R. 41.) In their complaint in the trial court (R. 10, 11), in their briefs and in their petition for rehearing (R. 26, 35 to 38) before the Supreme Court of Illinois Petitioners contended that the discriminatory and unconstitutional assessments of their

farm lands in 1939 violated both Section 1 of Article IX of the Constitution of the State of Illinois and the Fourteenth Amendment to the Constitution of the United States, upon which constitutional guaranties they expressly relied. (R. 10, 11.) The Supreme Court in its decision recognized these two grounds of complaint. (R. 22, 23.)

IV.

Specifications of Error.

1. The Supreme Court of Illinois erred in finding and holding that the plan of assessment involved in this case did not violate the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

2. The Supreme Court of Illinois erred in finding and holding that the Township Assessors, the Respondent as Supervisor of Assessments, and the Board of Review of Will County may assess all real estate located outside the limits of incorporated cities and villages in Will County, including Petitioners' farms, at a level of assessment grossly in excess of that applied by them to real estate located within the limits of such cities and villages, and grossly in excess of the level of assessment of all real estate in Will County, both urban and rural.

3. The Supreme Court of Illinois erred in finding and holding that the Township Assessors, the Respondent as Supervisor of Assessments, and the Board of Review of Will County may assess all farm lands, including Petitioners' property, at a level of assessment grossly in excess of the county level of assessment.

4. The Supreme Court of Illinois erred in finding and holding that land owners may not challenge their individual assessments by showing a deliberate and systematic undervaluation of other real estate in the taxing district.

V.

Summary of Argument.

I. The Illinois Supreme Court's decision denies judicial relief to owners of farm lands injured by a systematic and intentional underassessment of other real estate.

The Illinois Supreme Court in the instant case recognizes the discrimination against Petitioners' farm lands, construes the Illinois Constitution as prohibiting the assessment of one type of property at a higher level of assessment than another, but holds that Petitioners cannot secure judicial relief from the discriminating taxes.

II. Petitioners' real estate is assessed in violation of the Fourteenth Amendment to the Constitution of the United States.

III. City and rural real estate cannot, consistent with the Fourteenth Amendment, be separately classified and assessed at different levels of assessment.

VI.

ARGUMENT.

I. The Illinois Supreme Court's Decision Denies Judicial Relief to Owners of Farm Lands Injured by Systematic and Intentional Underassessment of Other Real Estate.

The allegations of the complaint, admitted to be true by the motion to dismiss, clearly show that the taxing authorities in Will County knowingly, deliberately and systematically assessed rural lands located outside the corporate limits of cities and villages in that county, including Petitioners' farm lands, at a level of assessment greatly in excess of that used in assessing real estate located within such corporate limits. Indeed, the Illinois Supreme Court in its opinion summarizes the admitted allegations as follows (R. 22):

> "It is alleged that in the year 1939 the taxing officials of Will County announced they would fix the assessed value of the real estate in the county at thirty per cent of its fair cash value but that, contrary to such announced intention, they fixed the assessed value of farm lands at thirty-five per cent of the fair cash value and the assessed value of city property at twenty-five per cent of its fair cash value."

The admitted allegations also show that Petitioners' lands were intentionally and systematically assessed at a level of assessment greatly in excess of that applied to all real estate generally (both urban and rural) in Will County. No question arises, therefore, as to the sufficiency of the allegations to show the discrimination against Petitioners' lands.

Likewise, there is no doubt as to the meaning of the uniformity clause of Section 1 of Article IX of the Illinois Constitution. That clause, the opinion states (R. 23), "precludes the taxing officials from adopting a method of valuing property whereby there is a discrimination in favor or against any class of property." Elaborating on this rule, the opinion states (R. 23):

> "This rule applies not only to the fair cash value of the property, but where an equalizing factor has been adopted by a taxing body or taxing officials by which property is listed for taxation purposes below its fair cash value, the same equalizing factor must be applied equally to other property in order to secure uniformity of taxes."

Thus, the Supreme Court of Illinois clearly stated the facts establishing the discrimination against Petitioners' lands and the constitutional requirement of uniformity in assessment.

The Court then states, however, that when the valuation of property "has been fixed by the officials so designated by statute, such value is not, in the absence of fraud, subject to the supervision of the judicial department of the State" (R. 23) and asserts (R. 24) that "Plaintiffs do not claim the taxing officials fraudulently valued their property too high." It is true that Petitioners did not contend that the taxing officials *corruptly* valued their property too high. No such allegation is required to state a case for relief from an intentional and systematic discrimination. Petitioners respectfully assert, however, that the complaint clearly alleges, and the Illinois Supreme Court's opinion recognizes, that the local assessing officials deliberately, intentionally and systematically discriminated against Petitioners' lands. Such discrimination has always been recognized as a species of "fraud" from which

injunctive relief could be obtained.[4] This proposition was fully developed in the petition for rehearing (R. 28 to 31) but was ignored by the Court.

The opinion of the Illinois Supreme Court next states (R. 24) "Neither do they contend the value placed on their property was higher proportionately than the value placed on other farm lands of like character similarly situated." This statement is, of course, true because the Petitioners' complaint is manifestly based upon the theory that rural lands as a whole, including Petitioners' farm lands, were assessed above the level of assessment applied to town and city lots and to real estate generally in Will County. No contention is made that Petitioners' farms are assessed at a higher level of assessment than other farms in Will County.

The opinion then states (R. 24) "Nor is there any claim of unjust discrimination arising out of the application of a different equalizing factor as between the various classes of property." By this statement the Illinois Supreme Court simply brushes aside Petitioners' complaint; for it is perfectly clear that the complaint is based upon the contention that a higher "equalizing factor" was applied to the assessment of rural lands, including Petitioners' farms, than was applied to the assessment of town and city lots and to real estate generally in Will County. True, the complaint uses the expression "level of assessment", in-

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4 *Peoples Gas Light & Coke Co.* v. *Stuckart,* 286 Ill. 164, 176 (1919).
Pelton v. *National Bank,* 101 U. S. 143, 148 (1879).
Cummings v. *National Bank,* 101 U. S. 153, 157, 158 (1879).
Raymond v. *Chicago Union Traction Co.,* 207 U. S. 20, 38 (1907).
Greene v. *Louisville & Interurban Ry. Co.,* 244 U. S. 499 (1917).
Louisville & Nashville Ry. Co. v. *Greene,* 244 U. S. 522 (1917).
Taylor, et al. v. *L. & N. R. R. Co.,* 88 F. 350, 374 (C. C. A. 6th, 1898).

stead of "equalizing factor", but the meaning is the same. That the Illinois Supreme Court had either misconceived Petitioners' case or disregarded it was pointed out in the petition for rehearing (R. 26 to 28) to no avail.

Further analyzing the complaint the opinion says:

> "If plaintiffs' grievance is directed at an over-assessed valuation from which fraud is presumed, then they have failed to plead facts to which such a presumption could be applied. The allegations in reference to over-assessment of farm lands are based on the sale values of 80 tracts of farm lands but there is no allegation that any of plaintiffs' lands formed a part of the 80 farms so considered, nor were any facts pleaded to show a similarity between any of the farms sold and plaintiffs' lands."

Here again the Illinois Supreme Court misconceives Petitioners' case which is based upon discrimination and not upon a claim that the assessments are so grossly excessive that they will be presumed fraudulent. And as we have already pointed out, there is no question but that the complaint sufficiently alleges the discrimination against Petitioners' lands.

The gist of the Illinois Supreme Court's decision is contained in the next two sentences of the opinion (R. 24):

> "On the other hand, if plaintiffs' claim rests upon the fact the city property was valued at a lower percentage of its fair market value than the farm lands, then the gist of their claim is that their land should be relieved from a part of the taxes levied for the reason other real estate was not assessed high enough. A court of equity will not grant injunctive relief under such circumstances."

At first blush the last sentence quoted above, considered apart from the context, might appear to mean that the decision below went off upon a procedural ground, namely, that Petitioners could not go into equity and secure relief in that forum by an injunction against the illegal tax. That

such was not the purpose or intent of the holding clearly appears from the cases which were cited by the Illinois Supreme Court in support of its holding, which include not only equity cases,[5] but also suits at law, being either suits in the County Court upon the application of the County Collector for judgment and sale of real estate (*People* v. *Lots in Ashley*, 122 Ill. 297 (1887); *People* v. *Cesar*, 349 Ill. 372 (1932) or suits brought directly against the taxpayer for the collection of the delinquent tax. (*Dunham* v. *City of Chicago*, 55 Ill. 357 (1870). Clearly, therefore, the objection of the Illinois Supreme Court to granting any relief to Petitioners was based upon substantive and not procedural grounds. Indeed that Court has previously held that an injunction will lie against the collection of taxes upon the ground of systematic and intentional discrimination in assessment. (*Peoples Gas Light & Coke Co.* v. *Stuckart*, 286 Ill. 164, 174 (1919).

The opinion of the Illinois Supreme Court concedes the inherent invalidity of the tax based upon the deliberate and discriminatory methods employed by the assessment officials, and it recognizes that the purpose of Petitioners' suit is to secure relief against the resulting illegal taxes. The holding of the Court is necessarily, therefore, that there is no judicial remedy whatsoever which Petitioners may follow to secure relief against the illegal tax itself.

In view of the Illinois Supreme Court's holding, the question is immediately raised as to what remedy the taxpayer has under such circumstances where there is an admitted discriminatory and illegal tax. The trial court asserted, among other things, that Petitioners' remedy "was an action of mandamus on behalf of all of the property owners to compel the assessing officials to obey the

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5 *Bistor* v. *McDonough*, 348 Ill. 624 (1932).
First National Bank of Urbana v. *Holmes*, 246 Ill. 362 (1910).
C. B. & Q. Ry. Co. v. *Frary*, 22 Ill. 34 (1859).
DuPage County v. *Jenks*, 65 Ill. 275 (1872).

Constitution and to assess all real estate, and perhaps all property, at the same rate." Assuming for the purposes of argument that the Illinois Supreme Court had some such remedy in mind when it held that a court of equity would not grant injunctive relief against the illegal tax, the contention is fully met by this Court's holding in *Sioux City Bridge Company* v. *Dakota County,* 260 U. S. 441 (1923) that to require the injured taxpayer to increase the under-assessed property

> "is to deny the injured taxpayer any remedy at all because it is utterly impossible for him by any judicial proceeding to secure an increase in the assessment of the great mass of under-assessed property in the taxing district."

Any possible question as to the meaning and intent of the language used by the Illinois Supreme Court arising from the phraseology employed is resolved into a deliberate holding that—aside from the chimerical remedy of a mandamus action which this Court, as stated, refused to countenance in the *Sioux City Bridge Company* v. *Dakota County, supra,*—a taxpayer in Illinois has no judicial remedy against a discriminatory and illegal assessment.

We earnestly submit that the Illinois Supreme Court's decision, which refuses Petitioners any remedy against admittedly illegal and discriminatory taxes, plainly denies them rights guaranteed by the Fourteenth Amendment and cannot be reconciled with this Court's holding in the *Sioux City Bridge Company* case.

II. Petitioners' Real Estate Is Assessed in Violation of the Fourteenth Amendment to the Constitution of the United States.

Numerous decisions of this Court upon fact situations similar to that presented here establish Petitioners' right to relief under the Fourteenth Amendment from the discriminatory assessments of their real estate.

In *Sunday Lake Iron Company* v. *Wakefield*, 247 U. S. 350 (1918), at pages 352, 353, this Court said:

> "The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents. And it must be regarded as settled that intentional systematic undervaluation by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property."

This same principle is, of course, applicable where the taxpayer's real estate, although assessed at less than actual value, is deliberately assessed at a higher percentage of full value than is used in assessing other real estate. This fact situation was presented in *Raymond* v. *Chicago Union Traction Co.*, 207 U. S. 20 (1907). The *Raymond* case was a sequel to *State Board* v. *People ex rel. Goggin*, 191 Ill. 528 (1901), in which the State Board of Equalization was compelled by mandamus to reassess the capital stock of twenty-three named utility corporations. The Board, pursuant to what it thought was the command of the writ, thereafter assessed their capital stock at one-fifth of an amount in excess of full value, whereas at the same time all property in Illinois and in Cook County had been assessed at not to exceed one-fifth of 65% to 75% of its fair cash value. Thus a large class had been uniformly and systematically assessed at a level of assessment which was grossly in excess of that applied to other property, just as Petitioners have admittedly been discriminated against. In affirming the judgment of the lower court which had granted an injunction against the collection of the discriminatory taxes, this Court said (p. 38):

> "A system of valuation was adopted and applied to a large class of corporations, differing wholly from that applied to other corporations of the same class,

and resulting in a discrimination against the appellee of the most serious and material nature. It is not a question of mere difference of opinion as to the valuation of property, but it is a question of difference of method in the manner of assessing property of the same kind. Although the law itself may be valid and provide for a proper valuation, yet if, through mistake on the part of the State, through its board of equalization and while acting as a *quasi*-judicial body, the board erred in the method to be pursued in relation to the corporations now before us, the mistake is one which may be corrected in equity."

Sioux City Bridge Company v. *Dakota County, Nebraska,* 260 U. S. 441 (1923), involved facts strikingly similar to those of the instant case. The plaintiff Bridge Company contended that the assessment of the Nebraska portion of its bridge was excessive and arbitrarily made in violation of the due process and equal protection clauses of the Fourteenth Amendment. It was shown that while the bridge was assessed at about its fair value, acre property in Dakota County was generally assessed at 55.7% and improvements on city property at 49.29% of their selling value. As here, the state supreme court denied the taxpayer relief. In a classic opinion by Mr. Chief Justice Taft, this Court reversed the lower court which had decided that the taxpayer's only remedy was an action to raise the assessments of the undervalued property and held that the taxpayer was entitled to have its assessment reduced to the prevailing level of assessment.

In *Brinkerhoff-Faris Trust & Savings Co.* v. *Hill,* 281 U. S. 673 (1930), a trust company, as trustee for its shareholders, sought to restrain the collection of a portion of taxes assessed against the shares of its stock. It was alleged that the township assessor had intentionally and systematically discriminated against its shareholders by assessing bank stock at full value, while intentionally and systematically omitting to assess certain classes of prop-

erty and assessing all other classes of property at 75% or less of their value. The trial court dismissed the complaint, and the state supreme court affirmed the lower court's judgment. In reversing the state supreme court's judgment, this Court said (p. 678):

> "The plaintiff asserted an invasion of its substantive right under the Federal Constitution to equality of treatment. (Citations omitted.) If the allegations of the complaint could be established, the Federal Constitution conferred upon the plaintiff the right to have the assessments abated by 25 per cent."

In *Iowa-Des Moines National Bank* v. *Bennett*, 284 U. S. 239 (1931), it was charged that for the years 1919-1922, the taxing officials of Polk County, Iowa, exacted from petitioner taxes on shares of its stock at rates higher than were exacted of competing moneyed capital. The trial court denied relief, and the Iowa Supreme Court affirmed the trial court's judgment. In reversing the state supreme court's judgment, this Court stated (p. 245):

> "Both petitioners claim that they have been subjected to intentional, systematic discrimination in violation of the equal protection clause of the Fourteenth Amendment. The federal right of the Central State Bank rests wholly upon that clause. It is assumed that there was such inequality of treatment as the Constitution prohibits. * * *"

and further stated (p. 247):

> "* * * it is well settled that a taxpayer who has been subjected to discriminatory taxation through the favoring of others in violation of federal law, cannot be required himself to assume the burden of seeking an increase of the taxes which the others should have paid. * * *
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> "The petitioners are entitled to obtain in these suits refund of the excess of taxes exacted from them."

See also: *Cumberland Coal Co.* v. *Greene County, Pa.*, 284 U. S. 23 (1931); *U. S.* v. *Board of Comrs. of Osage County*, 251 U. S. 128 (1919).

Petitioners respectfully submit that the allegations of their complaint, admitted to be true by the motion to dismiss, bring the instant case squarely within the principle of the foregoing cases and entitle them to relief from the discriminatory assessments.

III. City and Rural Real Estate Cannot, Consistent With the Fourteenth Amendment, Be Separately Classified and Assessed at Different Levels of Assessment.

Petitioners' lands involved in this case are farm lands, but the discrimination complained of is not directed solely against farm lands. *Rather, it is directed against all real estate located outside the limits of cities and villages in Will County,* which naturally includes farm lands. The important fact is that the discrimination is geographical, not kind. This clearly appears from the Illinois State Tax Commission's survey which divided *all* real estate transfers in Will County geographically into two classes—urban and rural—and which found that the discrimination of which Petitioners complain was directed against rural and in favor of urban real estate. (R. 8, 9.) The survey of the Illinois Agricultural Association (R. 9, 10) included *all* bona fide sales of real estate in Will County, which, in turn, were geographically classified into "town and city lots" and "farm lands". The assessment ratios found in the two surveys (which show remarkably similar results) were used by Petitioners in their complaint as the measure of the discrimination against their farms. (R. 9, 10.) The same ratios would equally well have measured the discrimination against any other parcel of real estate in Will County located outside the limits of cities and villages and devoted to any other use than farming.

Furthermore, neither in the record nor in the Supreme Court's opinion is there any discussion of possible or supposed differences between urban and rural property which

would make a classification for purposes of taxation reasonable or proper.

In its opinion the Illinois Supreme Court quoted from *Bistor* v. *McDonough*, 348 Ill. 624 (1932) saying (R. 24):

> "The contention that the assessments upon the lots and parcels of real estate of the appellants are void because there was discrimination in favor of personal property is not tenable. It has been the uniform rule in this State that neither the omission to assess nor the under-valuation of one kind or class of property will invalidate the assessment upon other property in the same jurisdiction."

An examination of the *Bistor* opinion will show that the real ground of decision was the taxpayer's failure to exhaust his administrative remedy by filing a complaint before the Board of Review. And besides, the asserted discrimination was against real estate and in favor of personalty. Real estate and personal property are of different kinds or classes, and, if authorized by the taxing statutes themselves, may, consistent with the Fourteenth Amendment, be assessed at different proportions of actual value.

The Court also cites and relies upon *First National Bank of Urbana* v. *Holmes*, 246 Ill. 362 (1910) which refused relief to an owner of personal property on the ground of undervaluation of real estate. The Court did not rest its decision upon the ground that such classification was proper. Rather it condemned the discrimination, but denied relief apparently upon the ground, repudiated by this Court in the *Sioux City Bridge* case, that the taxpayer's remedy was to compel by mandamus an increase in the assessment of the undervalued property. An examination of the other cases cited by the Illinois Supreme Court (R. 24, 25) will disclose that they furnish no support for a contention that classification of property is permissible under the Illinois Constitution.

Regardless of the *Bistor* and *Holmes* cases, the opinion of the Illinois Supreme Court in the instant case does *not* proceed upon the theory that, consistent with either the state or federal constitutions, rural and urban real estate can be separately classified for the purpose of the burden of taxation and the former can be assessed at a higher percentage of actual value than is used in assessing the latter. Intimations in the trial court's opinion that such classification might be proper (R. 16) were repudiated by the Illinois Supreme Court with the statement (R. 23) that

> "The constitutional provision precludes the taxing officials from adopting a method of valuing property whereby there is a discrimination in favor of or against any class of property."

Such statement is the law of the instant case.

The instant case is, therefore, presented to this Court upon a square and direct construction of Section 1 of Article IX of the Constitution of Illinois that that section prohibits classification of property for taxation. The Illinois Supreme Court's construction of the Illinois Constitution as found in its opinion in this case settles the Illinois law applicable to this case and eliminates any contention which otherwise might be made, that classification of town and city lots into one class and farm lands into another for the purpose of applying different levels of assessment is permissible under the Illinois Constitution.

It is manifest, however, that the effect of the Illinois Supreme Court's decision is directly contrary to the construction which the decision places upon the Illinois Constitution. The direct effect of the decision is to place urban and rural real estate into separate classes and to permit the assessment of the former at a lower percentage of fair cash value than is used in assessing the latter. This actual effect of the decision was clearly

pointed out in the petition for rehearing. (R. 35-38.) This classification of all real estate in Will County into two groups for the purpose of bearing different proportions of the burden of taxation in relation to value, which is the necessary effect of the state supreme court's decision, rests upon no justifiable factual basis and clearly violates the equal protection clause of the Fourteenth Amendment.

Petitioners recognize that the Fourteenth Amendment is by no means as restrictive as the uniformity requirement of Section 1 of Article IX of the Illinois Constitution. They further recognize that this Court has often held that the Fourteenth Amendment was not intended to compel a state "to adopt an iron rule of equal taxation", and that, as applied to the states' taxing power, the Fourteenth Amendment has been held not to prohibit reasonable classification of property for tax purposes so long as all persons similarly situated are treated alike. (*Bell's Gap R. R.* v. *Penn.*, 134 U. S. 232, 237 (1890).) They likewise are aware of the rule announced in *Nashville, C. & St. L. Ry.* v. *Browning*, 310 U. S. 362 (1940) that

> "* * * if the state supreme court chooses to cover up under a formal veneer of uniformity the established system of differentiation between two classes of property, an exposure of the fiction is not enough to establish its unconstitutionality."

Nevertheless, Petitioners respectfully assert that the facts of the instant case disclose a flagrant violation of "that meritorious conception of equality which alone the Equal Protection Clause was designed to assure."

This Court has considered in many cases the scope of permissible classification under the equal protection clause. In no decision has it ever justified discrimination in the burden of taxation between parcels of real estate upon the mere accident of geography. As this Court said in *Hartford Co.* v. *Harrison*, 301 U. S. 459 (1937) (p. 462):

> "Despite the broad range of the State's discretion,

it has a limit which must be maintained if the constitutional safeguard is not to be overthrown. Discriminations are not to be supported by mere fanciful conjecture. * * * They cannot stand as reasonable if they offend the plain standards of common sense. * * *"

But even if the discrimination complained of in this case were directed against farm lands as a kind or class of real estate rather than against farm lands by reason of their location outside city and village limits, such discrimination would violate the equal protection clause of the Fourteenth Amendment and cannot be justified under *Nashville, Chattanooga and St. Louis Railway* v. *Browning,* 310 U. S. 362 (1940), and other decisions of this Court. In the *Nashville* case, railroads and utilities were assessed by different agencies than assessed all other kinds of property. In Illinois town and city lots and farms are assessed by the same officials under identical statutory requirements. Furthermore, the law has long been settled that consistent with the Fourteenth Amendment, railroads may be separately classified and taxed. On the other hand, there are no decisions of this or any other court which we have been able to discover which permit farm lands to be placed in one class and town and city lots in another for the purpose of bearing the burden of taxation. In the *Nashville* case the state practice of discrimination was uniform and of long standing. Here it is neither alleged in the complaint nor true in fact that any such settled, long standing administrative practice exists in Illinois of discrimination in assessment in favor of town and city lots and against farm lands. On the contrary, an examination of the decisions of the Illinois Supreme Court will reveal that, without exception, discrimination in assessment between types of real estate has always been recog-

nized as unusual and abnormal[6] and has been uniformly condemned.[7] Furthermore, whereas in the *Nashville* decision a single state wide administrative practice of discrimination was admitted, here the discrimination involved is only county-wide, leading to as many different administrative practices of discrimination as there are counties in Illinois. (102)

It follows that removing the discrimination against Petitioners' farm lands will not have the effect of uprooting a system of taxation "inseparable from the state's tradition of fiscal administration and ingrained in the habits of its people" as would have occurred had the taxpayer's complaint in the *Nashville* case been allowed.

As has already been pointed out, neither in the record of this case nor in the state supreme court's opinion, were any factual differences between "farm lands" and "town and city lots" pointed out. As a matter of fact, city and village limits in a county such as Will frequently embrace considerable land which is devoted to farming. Often a city or village boundary is but an imaginary line which divides a field in which the same crop is growing on both sides of

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[6] Even though the record in this case is silent on the subject, it might be inferred from *Bistor* v. *McDonough*, 348 Ill. 624 (1932); *People ex rel. McDonough* v. *Reinecke*, 354 Ill. 351 (1933); *American Mutual Liability Ins. Co.* v. *McDonough*, 61 Fed. (2d) 558 (C. C. A. 7th, 1932), being the so-called "tax strike" cases and *First Nat'l Bank of Urbana* v. *Holmes*, 246 Ill. 362 (1910), that there is an administrative practice in Illinois to fail to assess much personal property and to assess the balance at a much lower percentage of full value than is used in assessing real estate. Personal property, however, is assessed in Illinois under entirely different statutory provisions than is real estate, and is manifestly and fundamentally different for purposes of taxation than is real estate. Even so, the practice of under-assessing personal property in Illinois has never been judicially sanctioned, and all of the cases which refuse to allow such discrimination as a defense to taxes on real estate turn on the failure of the complaining taxpayer to pursue the proper remedy.

[7] See *People* v. *Wiggins Ferry Co.*, 357 Ill. 173, 180 (1934); *People* v. *St. Louis Bridge Co.*, 357 Ill. 245, 253 (1934); and *People ex rel. Wangelin* v. *Gillespie*, 358 Ill. 40, 47 (1934).

the line. On the other hand, it is also common knowledge that much land located outside city or village limits is devoted to the same residential or industrial purposes as land located within those limits. Moreover, such differences as may exist between these two groups of real estate in Will County are immaterial, as mere difference is not enough. The attempted classification must rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed and cannot be made arbitrarily and without any such basis.[8]

The admitted discrimination against Petitioners' farm lands bears no reasonable relation to such factual differences as may exist. No reasonable basis exists in this case and none has been pointed out for discriminating against the owners of farm lands in Will County. "If there were any such basis, it would have been discovered by the state courts." *Hartford Co.* v. *Harrison,* 301 U. S. 459, 463 (1937).

Accordingly, whether the discrimination against Petitioners' lands be considered as purely geographical or whether it be considered as directed against farm lands as a class, it is in either event a "clear and hostile discrimination * * * of an unusual character, unknown to the practices of our government," from which Petitioners are entitled to relief under the equal protection clause of the Fourteenth Amendment.

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[8] See *Gulf, Colorado & Santa Fe Ry.* v. *Ellis,* 165 U. S. 150, 155 (1897); *Southern Ry. Co.* v. *Greene,* 216 U. S. 400, 417 (1910); *Royster Guano Co.* v. *Virginia,* 253 U. S. 412, 415 (1920); *Schlesinger* v. *Wisconsin,* 270 U. S. 230, 240 (1926); *Louisville G. & E. Co.* v. *Coleman,* 277 U. S. 32, 37 (1928); and *Hartford Co.* v. *Harrison,* 301 U. S. 459 (1937).

VII.

Conclusion.

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers in order that the method of assessment here involved, which, if sustained, will deprive Petitioners of rights guaranteed them by the Fourteenth Amendment, may be presented to this Court for consideration and decision, and that to such an end a writ of certiorari should be granted in this case and this Court should review the decision of the Supreme Court of Illinois and finally reverse it.

Respectfully submitted,

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